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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 THE AMERICAN INSURANCE  
12 COMPANY,

Plaintiff,

13 vs.

14 MEDICAL PROTECTIVE COMPANY, *et*  
15 *al.*,

Defendants.  
16

CASE NO. 11CV105 DMS (CAB)

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
RECONSIDERATION**

17 In this action for equitable contribution and indemnity, Defendant The Medical Protective  
18 Company ("MPC") filed a motion for reconsideration of the September 8, 2011 Order Granting  
19 Plaintiff's Motion for Partial Summary Judgment, which Plaintiff The American Insurance Company  
20 ("American") opposed. For the reasons which follow, MPC's motion for reconsideration is  
21 **GRANTED.**

22 American and MPC issued professional liability policies to Shervin Erfani, DMD. Dr. Erfani  
23 was a named defendant in several lawsuits charging him with fraudulent billing practices and  
24 professional negligence. He allegedly demanded American and MPC to defend him in these actions.  
25 Although MPC initially participated in Dr. Erfani's defense, it stopped participating in May 2011.

26 MPC filed an action against Dr. Erfani to rescind the extension contract endorsement to the  
27 professional liability policy it issued to Dr. Erfani, which allegedly covers Dr. Erfani's claims  
28 underlying this action. Subsequently American filed this action against MPC for equitable

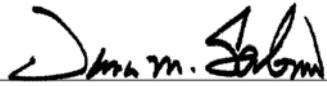
1 contribution and indemnity. American alleged MPC had a duty to contribute to Dr. Erfani's defense  
2 and the settlement or judgment of the lawsuits, and should reimburse American for taking on more  
3 than its share of these expenses. MPC asserted a defense of rescission, claiming it is not obligated to  
4 contribute because its underlying contract with Dr. Erfani should be rescinded.

5 American filed a motion for partial summary judgment requesting a finding that MPC cannot  
6 assert the rescission defense under the circumstances of this case. The motion was granted by order  
7 filed September 8, 2011. MPC seeks reconsideration of that order.

8 Because there are genuine issues of material fact (1) whether Dr. Erfani's misrepresentations  
9 were material in light of the guarantee in MPC's policy to offer an extension contract; and (2) whether  
10 MPC complied with its contractual obligation to offer an extension contract to Dr. Erfani, and for the  
11 reasons stated in the Order Denying Plaintiff's Ex Parte Application for Default Judgment and Its  
12 Motion for Reconsideration, filed concurrently herewith in related case, *The Med. Protective Co. v.*  
13 *Erfani*, U.S. Dist. Ct. S.D. Cal. case no. 09cv2833-DMS(CAB), MPC's motion for reconsideration  
14 is **GRANTED**. Accordingly, the September 8, 2011 order is hereby amended and American's motion  
15 for partial summary judgment on MPC's rescission defense is **DENIED**.

16 **IT IS SO ORDERED.**

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18 DATED: December 5, 2011

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21 HON. DANA M. SABRAW  
22 United States District Judge  
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